IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6214 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHILADEVI KANAIYALAL SANGTANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6214 of 2004

MR MAHENDRA K PATEL for Petitioner No. 1

MS. MITA PANCHAL APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/07/2004

ORAL JUDGEMENT

1. Rule. Ms. Mita Panchal, learned A.P.P. appears and waives service of notice of rule on behalf of

respondent No.1.

2. By filing this petition under Section 482 of the Code of Criminal Procedure ('the Code' for short), the petitioner who claims to be the owners of Maturi car bearing registration No.GJ-1-R-1758, seeks to challenge the order dated 30.4.2004 passed by the learned Additional Sessions Judge (Fast Track Court No.1), Ahmedabad (Rural) in Criminal Revision Application No.40 of 2004 by which order dated 10.2.2004 rendered below Ex.1 in Misc. Criminal Application No.3 of 2004 by the JMFC, Ahmedabad (Rural) by which the learned JMFC has rejected the application filed by the petitioner for permitting her to sell the car, is upheld.

3. Maruti car bearing registration no.GJ-1-R-1758 belonging to the petitioner was stollen by unidentified person/s from Gandhinagar-Sarkhej Highway, near Kiran Motors and therefore son of the petitioner Sanjay had registered a complaint with Satellite Police station on 22.5.2003 vide CR No.385 of 2003. Satellite Police station had also registered one entry being No.201 of 2003 in this regard.

4. During the course of investigation, Satellite Police station found the Maturi car from the Highway and therefore son of the petitioner approached the learned JMFC Ahmedabad (Rural) for custody of the Maturi car by filing Application No.67 of 2003 which was allowed by order dated 25.6.2003 and resultantly custody of the car was handed over to the son of the petitioner on certain conditions which according to the petitioner have been complied with till date.

5. On 13.8.2003 the police submitted A summary before the JMFC Ahmedabad Rural as the police could not trace out the accused till date of filing of A summary. The said summary has also been granted by the learned JMFC, Ahmedabad Rural. The petitioner therefore preferred Misc. Criminal Application No.3 of 2004 before the learned JMFC, Ahmedabad Rural seeking permission to sell the said car as the car is of 1993 model. The said application has been rejected vide order dated 10.2.2004 by the learned Magistrate.

6. Aggrieved by the order passed by the learned JMFC, Ahmedabad Rural, the present petitioner preferred Criminal Revision Application No.40 of 2004 before the learned Additional Sessions Judge, Fast Track Court No.1, Ahmedabad Rural which also met with the same fate which has given rise to the present petition.

7. The sole contention canvassed by Mr. Mahendrabhai Patel, learned advocate of the petitioner is that there is no dispute about the ownership of the car which admittedly belongs to the petitioner. He also submitted that the police could not trace out the accused till today. Therefore A summary has been ought for which has been granted by the learned Magistrate. According to him, the car is of 1993 model and the petitioner wants to sell it. Therefore, according to him, both the orders impugned in this petition, deserve to be quashed and set aside and the petitioner may be permitted to sell the car.

8. Ms. Mita Panchal, learned APP submits that since the accused is unidentified, if in future he/they is/are traced out and he/they claim/s ownership of the car, in that case, the petitioner has to indemnify that person who claim/s to be the owner of the car upon his furnishing proof thereof and therefore some stringent condition may be imposed while passing the order as prayed for by the petitioner.

9. I have given my anxious considered thought to the rival contentions advanced by the learned advocates appearing for the parties. There is no dispute that the car was stolen by unidentified person/s from Gandhinagar - Sarkhej Highway and therefore a case was registered with Satellite police station. During the course of investigation, the car was found from the highway. The police could not trace out the accused even today and therefore A summary has been sought for. As per RTO registration the petitioner is the owner of the car. It is true that son of the petitioner has claimed interim custody of the car under section 451 of the Code as he has lodged complaint. However, the fact remains that the petitioner is the owner of the car and therefore according to this court she is entitled to the relief which she has claimed i.e., permitting her to sell the car.

10. In aforesaid view of the matter, both the orders which are impugned in this petition deserve to be quashed and set aside by allowing the application filed by the petitioner seeking permission to sell the car.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 10.2.2004 passed by the learned JMFC, Ahmedabad Rural in Misc. Criminal Application No.3 of 2004 and the order dated 30.4.2004 passed by the learned Additional Sessions Judge

(Fast Track Court No.1), Ahmedabad Rural in Criminal Revision Application No. 40 of 2004 both are quashed and set aside and the Misc. Criminal Application No.3 of 2004 filed by the petitioner before JMFC, Ahmedabad Rural seeking permission to sell the car is hereby granted. Rule is made absolute accordingly.

(A.M. Kapadia, J.)

(karan)